

the basis of requests, a significant degree of public interest in a draft permit. The reviewing authority may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision. The reviewing authority must provide notice of any public hearing at least 30 days prior to the date of the hearing. Public notice of the hearing may be concurrent with that of the draft permit and the two notices may be combined. Reasonable limits may be set upon the time allowed for oral statements at the hearing.

(5) The reviewing authority must make a tape recording or written transcript of any hearing available to the public.

§ 49.172 Final permit issuance and administrative and judicial review.

(a) *How will final action occur and when will my permit become effective?* After making a decision on a permit, the reviewing authority must notify you of the decision, in writing and if the permit is denied, provide the reasons for such denial and the procedures for appeal. If the reviewing authority issues a final permit to you, it must make a copy of the permit available at any location where the draft permit was made available. In addition, the reviewing authority must provide adequate public notice of the final permit decision to ensure that the affected community, general public and any individuals who commented on the draft permit have reasonable access to the decision and supporting materials. A final permit becomes effective 30 days after service of notice of the final permit decision, unless:

(1) A later effective date is specified in the permit or

(2) Review of the final permit is requested under paragraph (d) of this section (in which case the specific terms and conditions of the permit that are the subject of the request for review must be stayed) or

(3) The draft permit was subjected to a public comment period and no comments requested a change in the draft permit or a denial of the permit, in which case the reviewing authority

may make the permit effective immediately upon issuance.

(b) *For how long will the reviewing authority retain my permit-related records?* The records, including any required applications for each draft and final permit or application for permit revision, must be kept by the reviewing authority for not less than 5 years.

(c) *What is the administrative record for each final permit?*

(1) The reviewing authority must base final permit decisions on an administrative record consisting of:

(i) All comments received during any public comment period, including any extension or reopening;

(ii) The tape or transcript of any hearing(s) held;

(iii) Any written material submitted at such a hearing;

(iv) Any new materials placed in the record as a result of the reviewing authority's evaluation of public comments;

(v) Other documents in the supporting files for the permit that were relied upon in the decision-making;

(vi) The final permit;

(vii) The application and any supporting data furnished by you, the permit applicant;

(viii) The draft permit or notice of intent to deny the application or to terminate the permit and

(ix) Other documents in the supporting files for the draft permit that were relied upon in the decision-making.

(2) The additional documents required under paragraph (c)(1) of this section should be added to the record as soon as possible after their receipt or publication by the reviewing authority. The record must be complete on the date the final permit is issued.

(3) Material readily available or published materials that are generally available and that are included in the administrative record under the standards of paragraph (c)(1) of this section need not be physically included in the same file as the rest of the record as long as it is specifically referred to in that file.

(d) *Can permit decisions be appealed?* Permit decisions may be appealed according to the following provisions:

Environmental Protection Agency

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(1) The Administrator delegates authority to the Environmental Appeals Board (the Board) to issue final decisions in permit appeals filed under this program. An appeal directed to the Administrator, rather than to the Board, will not be considered. This delegation does not preclude the Board from referring an appeal or a motion under this program to the Administrator when the Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Board, all parties shall be so notified and the provisions of this program referring to the Board shall be interpreted as referring to the Administrator.

(2) Within 30 days after a final permit decision has been issued, any person who filed comments on the draft permit or participated in the public hearing may petition the Board to review any condition of the permit decision. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent that the changes from the draft to the final permit or other new grounds were not reasonably ascertainable during the public comment period on the draft permit. The 30-day period within which a person may request review under this section begins with the service of notice of the final permit decision, unless a later date is specified in that notice.

(3) The petition must include a statement of the reasons supporting the review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing) to the extent required by these regulations, unless the petitioner demonstrates that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period and, when appropriate, a showing that the condition in question is based on:

- (i) A finding of fact or conclusion of law that is clearly erroneous or
- (ii) An exercise of discretion or an important policy consideration that the Board should, in its discretion, review.

(4) The Board may also decide on its own initiative to review any condition of any permit issued under this program.

(5) Within a reasonable time following the filing of the petition for review, the Board will issue an order either granting or denying the petition for review. To the extent review is denied, the conditions of the final permit decision become final agency action. If the Board grants review in response to requests under paragraph (d)(2)–(3) or (4) of this section, public notice must be given as provided in § 49.171(b). Public notice must set forth a briefing schedule for the appeal and must state that any interested person may file an amicus brief. If the Board denies review, you, the permit applicant and the person(s) requesting review must be notified through means that are adequate to assure reasonable access to the decision, which may include mailing a notice to each party.

(6) The reviewing authority, at any time prior to the rendering of the decision under paragraph (d)(5) of this section to grant or deny review of a permit decision, may, upon notification to the Board and any interested parties, withdraw the permit and prepare a new draft permit addressing the portions so withdrawn. The new draft permit shall proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this part.

(7) A petition to the Board under paragraph (d)(2) of this section is, under section 307(b) of the Act, a prerequisite to seeking judicial review of the final agency action.

(8) For purposes of judicial review, final agency action occurs when a final permit is issued or denied by the reviewing authority and agency review procedures are exhausted. A final permit decision will be issued by the reviewing authority:

- (i) When the Board issues notice to the parties that review has been denied;
- (ii) When the Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings or

(iii) Upon the completion of remand proceedings if the proceedings are remanded, unless the Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

(9) The reviewing authority shall promptly publish in the FEDERAL REGISTER notice of any final agency action on a permit.

(10) Motions to reconsider a final order must be filed within 10 days after service of the final order. Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision must be directed to and decided by, the Board. Motions for reconsideration directed to the Administrator, rather than to the Board, will not be considered, except in cases the Board has referred to the Administrator pursuant to § 49.172(d)(1) and in which the Administrator has issued the final order. A motion for reconsideration will not stay the effective date of the final order unless specifically so ordered by the Board.

(11) For purposes of this section, time periods are computed as follows:

(i) Any time period scheduled to begin on the occurrence of an act or event must begin on the day after the act or event.

(ii) Any time period scheduled to begin before the occurrence of an act or event must be computed so that the period ends on the day before the act or event, except as otherwise provided.

(iii) If the final day of any time period falls on a weekend or legal holiday, the time period must be extended to the next working day.

(iv) Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days must be added to the prescribed time.

(e) *Can my permit be reopened?* The reviewing authority may reopen an existing, currently-in-effect permit for cause on its own initiative, such as if it contains a material mistake or fails to assure compliance with applicable requirements. However, except for those permit reopenings that do not increase the emissions limitations in the per-

mit, such as permit reopenings that correct typographical, calculation and other errors, all other permit reopenings shall be carried out after the opportunity of public notice and comment and in accordance with one or more of the public participation requirements under § 49.171(b)(1)(ii).

§ 49.173 Administration and delegation of the nonattainment major NSR program in Indian country.

(a) *Who administers a nonattainment major NSR program in Indian country?*

(1) If the Administrator has approved a TIP that includes a major NSR program for sources in nonattainment areas of Indian country that meets the requirements of part D of title I of the Act and § 51.165 of this chapter, the Tribe is the reviewing authority and will administer the approved major NSR program under Tribal law.

(2) If the Administrator has not approved an implementation plan, the Administrator may delegate the authority to assist EPA with administration of portions of this Federal nonattainment major NSR program implemented under Federal authority to a Tribal agency upon request, in accordance with the provisions of paragraph (b) of this section. If the Tribal agency has been granted such delegation, it will have the authority to assist EPA according to paragraph (b) of this section and it will be the reviewing authority for purposes of the provisions for which it has been granted delegation.

(3) If the Administrator has not approved an implementation plan or granted delegation to a Tribal agency, the Administrator is the reviewing authority and will directly administer all aspects of this Federal nonattainment major NSR program in Indian country under Federal authority.

(b) *Delegation of administration of the Federal nonattainment major NSR program to Tribes.* This paragraph (b) establishes the process by which the Administrator may delegate authority to a Tribal agency, with or without signature authority, to assist EPA with administration of portions of this Federal nonattainment major NSR program, in accordance with the provisions in paragraphs (b)(1) through (8) of this section.